

January 25, 1972

OPM Declassification & Release Instructions on File - No Referral to OPM

Mr. Gene Mittelman
Minority Counsel
Office of Senator Javits
Washington, D.C. 20510

Dear Mr. Mittelman:

This is in response to the questions you raised with me concerning the relationship of Executive Order 11473 on equal employment opportunity to national security agencies.

Executive Order 11473 applies to all Executive Branch agencies, including the Central Intelligence Agency and the National Security Agency. Thus, the regulations adopted pursuant to that order which provide for investigation and hearings of complaints of discrimination are applicable to those agencies to the extent that they do not conflict with the laws regarding their establishment and operation.

The Executive Order cannot override the provisions of law regarding the unauthorized disclosure of information or the discretion of the Director of CIA to terminate employment of its officers when he deems it necessary or advisable in the interest of the United States. However, in a case arising in the CIA whenever it was alleged that information could not be disclosed because it related to the national security, we are of the opinion that there would be no disclosure on a showing that the information did in fact relate to the national security. If there were such a showing, disclosure would be improper in our judgment.

There is nothing to prohibit a complainant who appeals under the Commission's regulations issued under the Executive Order to take an adverse decision on that appeal into the courts. Whether the courts would accept it and what their attitude would be to the disclosure of information is a matter on which we are not in a position to judge.

Our General Counsel is of the opinion that the language of S. 2515 which gives a complainant an opportunity for an action at law in connection with his complaint would not override Section 102(c) of the National Security Act of 1947 or section 7 of the CIA Act

of 1949 which prohibits the publication, disclosure, organization, function, names, official titles, salaries and number of personnel employed by the CIA. Similarly, we do not believe that S. 2515 being general legislation would amend specific legislation such as the National Security Act or the CIA Act.

Sincerely yours,

Irving Kator
Assistant Executive Director

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Remarks:

This is a copy of the letter which Irving Kator told me he would send over. It would seem to me that this leaves us in a situation where it is desirable for us to do what we can to ensure that either the law itself or at least the legislative history and conference report clearly indicate that it is not intended that S. 2515 would amend specific legislation such as the National Security Act or the CIA Act.

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FROM: NAME, ADDRESS AND PHONE NO.

DATE

L. K. White

31 Jan 72